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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/325,219 10/21/94 SCHADE

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EXAMINER

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CHENG, W

ART UNIT PAPER NUMBER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 14

Application Number: 08/325,219

Filing Date: 10/21/94

Appellant(s): C. Schade, A. Sanner, H-U. Wekel, F. Frosch, and H. Westenfelder

Keil and Weinkauf

For Appellant

Art Unit:

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed on November 20, 1996.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is deficient because the amendment, filed on August 31, 1995, changed B(4) to --C10-C25-- alkyl vinyl ethers..

Art Unit:

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 10-13, 15 and 17; and claim 14 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

A substantially correct copy of appealed claim 13 appears on page 7 of the Appendix to the appellant's brief. The minor errors are as follows: the statement under (1) does not agree with that in the amendment, filed on August 31, 1995..

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

047,009 GEORGE (European Patent 3-1982
Office)

(10) *New Prior Art*

No new prior art has been applied in this examiner's answer.

(11) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Art Unit:

The rejection of claims 10-15 and 17 under 35 USC 102(b) over George (EP 047,009) is withdrawn. The rejection of claims 10, 12-13, 15, and 17 under 35 USC 102(b) over Blank (US 3,755,272) is withdrawn.

(12) *New Ground of Rejection*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Art Unit:

Claims 10-15 and 17 are rejected under 35 USC 103(a) over George (EP 049,009).

In the abstract and claim 1 of the reference, George discloses a polymer of 70 to 93 weight percent of acrylic acid and 7 to 30 weight percent of an olefin with 6 to 18 carbon atoms.

Cross-linking agents are mentioned from line 10 on page 10 to line 9 on page 11. Near the bottom of page 2 of the reference, George teaches that the monomer mixture, where the acrylic acid had not been previously neutralized, can be polymerized in the presence of a free radical peroxygen catalyst. In lines 11-15 on page 12, George teaches that these polymers have enhanced thickening property even in the presence of a salt, and have applications in personal care products. Cosmetic or pharmaceutical compositions are personal care products. Thus each element of the claim is disclosed in the reference. Although each of these elements are not specifically matched, such is within the purview of the reference and matching these disclosed elements has not been shown to lead to unexpected results and is therefore obvious.

(13) Response to argument

Under argument Ib of the appeal brief, the appellant argued that claim 14 is not anticipated by George under 35 USC 102(b). However George teaches the use of allyl pentaerithritol and allyl sucrose in line 5 on page 11, trimethylolpropane diallyl ether in line 1 on page 11, allyl acrylate in line 29 on page 10, and methylenebisacrylamide in line 4 on page 11. Thus the reference renders the instant claim obvious.

(14) Period of Response to New Ground of Rejection

Art Unit:

In view of the new ground of rejection, appellant is given a period of TWO MONTHS from the mailing date of this examiner's answer within which to file a reply to such new ground of rejection. The reply may include any amendment or material appropriate to the new ground of rejection. Prosecution otherwise remains closed. Failure to respond to the new ground of rejection will result in dismissal of the appeal of the claims so rejected.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



JOSEPH L. SCHOFER
SUPERVISORY PATENT EXAMINER
ART UNIT 155



W. C. Cheng
January 29, 1997

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